

AMENDMENT UNDER 37 C.F.R. § 1.111
APPLICATION NO. 09/517,691
ATTORNEY DOCKET NO. Q58016

REMARKS

General remarks.

Claims 1-8 are all the claims pending in the application. By this Amendment, Applicant adds new claims 5-8. New claims 5-8 contain no new matter, and are clearly supported throughout the specification (*see* for example page 2, lines 3 to 10; page 6, line 1 to page 7, line 14 of the specification).

Also, claims 1-4 have been amended solely for the purpose of improved readability. Since such amendments are made to correct minor, basic elements, Applicant submits that that they do not narrow the scope of the claim and do not raise any Festo implications.

Summary of the Office Action.

Applicant thanks the Examiner for initialing the Information Disclosure Statement, Form 1449A and for acknowledging all claims to priority as well as the receipt of the certified priority documents. However, the Examiner failed to indicate the status of the drawings on the form PTO-326. Therefore, Applicant respectfully requests the Examiner to indicate the status of acceptance for the drawings. The Examiner rejected claims 1-4 under 35 U.S.C. § 102(e) as being anticipated by Rao (US 5,940,738) (hereinafter "Rao").

Claims Rejection under 35 U.S.C. § 102(e)

Claims 1-4 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Rao. Applicant respectfully traverses this rejection and respectfully requests the Examiner to reconsider this rejection in view of the comments, which follow.

Of these claims, only claim 1 is independent. Claim 1 requires:

request handling means ... checking whether
said at least one requested channel is
available at said input of said broadcasting
unit;

AMENDMENT UNDER 37 C.F.R. § 1.111
APPLICATION NO. 09/517,691
ATTORNEY DOCKET NO. Q58016

request generating means, ... for generating second type request information indicative for said unavailable requested channel, when said at least one requested channel is not available at said input of said broadcasting unit; and ...

request transmitting means, coupled to said request generating means, for transmitting said second type request information to another broadcasting unit.

The Examiner asserts that claim 1 is directed to a broadcasting unit and is anticipated by Rao. The Examiner asserts that Rao's request processing means is equivalent to request handling means as set forth in claim 1 (see page 3 of the Office Action). Moreover, the Examiner asserts that request generation means and request transmitting means for the second type request information is inherently equivalent to request processing means and various video pedestals (VPs), respectively.

Applicant respectfully disagrees with the Examiner. Applicant has carefully studied Rao's discussion of request processing means and various VPs, which are not similar to request handler means, request generator means and request transmission as set forth in claim 1.

Rao teaches a system for distributing digital information to subscribers wherein selection from among multiple digital services is accomplished by transmitting a tuning command from a subscriber unit to an intermediate interface and then the intermediate interface selects the desired service and transmits it to the subscriber (see *Abstract*). Rao teaches statistical multiplexing, which consists of having a core VP 802 and an access VP 804. If a particular program is not available at the input of access VP 804 (which is the case when no user requested that program), then access VP 804 bounces a request to core VP 802. Core VP 802 then adjusts its filters to select the requested program and multiplexes it down the connection to access VP 804 (see Fig. 8, col. 16, lines 9 to 31). Moreover, further statistical multiplexing may take place between video

AMENDMENT UNDER 37 C.F.R. § 1.111
APPLICATION NO. 09/517,691
ATTORNEY DOCKET NO. Q58016

server 1100 (such as NVOD, OD-NVOD) connected to the core VP (see Figs. 12A and 12B; col. 18, lines 54 to 62).

Rao teaches server NVOD 1100 and OD-NVOD, which may have a storage 1102, opportunistic storage 1104 and external input 1112, which may include movies, commercial and other services (Figs. 11 and 14; col. 18, lines 38 to 53 and col. 22, lines 29 to 41). NVOD provides program to VPs as well as terminates unused channels. NVOD maintains a list of VPs to which it is coupled and when VP sends a cancellation, the NVOD server deletes the VP from the requester list and ceases the transmission of the channel (col. 21, lines 7 to 15). On the other hand, when a subscriber requests a program, which is unavailable in VP, VP sends a request to the NVOD. This request is received by request processor 1110, which further checks the schedule 1106 (which has the schedule with timing for when the movies versus commercial should be transmitted) and transmits the requested program via network adaptation unit 1108 (Fig. 11; col. 19, lines 21 to 31).

Moreover, Rao teaches an alternative embodiment of multiplexing the received movies and other services. Specifically, statistical multiplexing is applied to enable "on demand" transmission of content. As before scheduler 1402 may maintain an internal data-base indicating when the commercial stream is to be substituted for a particular movie feed. However, the scheduler 1402 does not insert a movie feed in the multiplexed stream unless request processor 1406 receives at least one request from a subscriber unit for a particular feed (Fig. 14; col. 22, lines 48 to 63).

However, Rao teaches an NVOD server which receives all programs and then selects which ones to pass to the user via multiplexing and network adoption unit. Thus, the Rao NVOD server is closer to a conventional broadcast unit than to the broadcast unit as set forth in claim 1. For instance, Rao teaches a conventional request processing means 1406 or 1110, which forwards the user's request to the scheduler 1402 (see col. 19, lines 25 to 36 and col. 22, lines 53 to 55). Rao fails to teach or suggest a request handling means, which check whether the requested channel is available, instead the scheduler just assigns a channel based on the user's

AMENDMENT UNDER 37 C.F.R. § 1.111
APPLICATION NO. 09/517,691
ATTORNEY DOCKET NO. Q58016

request. In other words, Rao's NVOD server has all possible channel at its input; thus there is no need to check if it available or not; the scheduler simply responds to the request by providing the requested program.

Moreover, VPs are separate structures which receive information from the NVOD server. VPs lack any channel selector, request handler, request generator, etc. No structure is taught for VPs. Rao teaches only that, when a channel is unavailable, the request is just bounced backed. This suggest that no new request is being generated as is explicitly required in claim 1. For instance, Rao teaches that that VP receives information from each subscriber as to which packet the subscriber wishes to receive and merely filters those packets down through access line. As a result, the VP structure is kept very simple (see col. 7, lines 18 to 24). Moreover, the input of access VP is controlled by setting filters in the core VP and not by means in the access VP.

Finally, Applicant respectfully submits that the Examiner's attempt to combine the parts of VPs with the parts of NVOD is improper because the two have different structures and different functionality. The artisan of ordinary skill could not make the suggested combination. In addition, the scheduler and request processor of NVOD handles the requests from the alleged request generator and transmitter of VPs.

Even assuming *arguendo* that Rao's scheduler 1402, request processing 1406, multiplexer 1400 and network adaptation unit 1408 are similar to channel selection means, request handling means, channel broadcasting means and request receiving means, respectively, Rao still fails to teach an NVOD with the explicitly required request generating means and a request transmitting means as set forth in claim 1. The NVOD receives a request, which it processes by selecting the requested service. Since Rao's NVOD server always can respond to the user's request without turning to another server, there is no need to generate and/or transmit a request anywhere else. In other words, NVOD server receives all services; thus, it does not need to request for a particular service or channel. In short, Rao teaches providing services on demand but does not teach or suggest not having all of the available programs/channels at the input of the NVOD server. Thus, Rao is directed for using channels only on demand but it is similar to a

AMENDMENT UNDER 37 C.F.R. § 1.111
APPLICATION NO. 09/517,691
ATTORNEY DOCKET NO. Q58016

conventional broadcasting unit because all possible programs serve as input into its NVOD server.

Therefore, request handling means, request generating means and request transferring means as set forth in claim 1 is not suggested or taught by Rao, which lacks request handling means which would check for an available channel, and request generating and transferring means. For these reasons, Applicant respectfully submits that independent claim 1 is patentably distinguishable from Rao. Applicant therefore respectfully requests the Examiner to withdraw this rejection of independent claim 1. Also, Applicant respectfully submits that claims 2-4 are allowable at least by virtue of their dependency on claim 1.

New Claims.

In order to provide more varied protection claims 5-8 have been added. Applicant respectfully submits that claim 5 is allowable by virtue of having limitations similar to those of claim 1, namely, having two types of requests generated. Claims 6-8 are allowable by virtue of their dependency on claim 5.

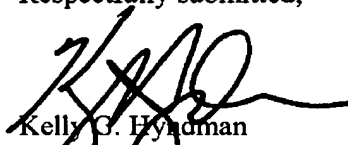
Conclusion and request for telephone interview.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.111
APPLICATION NO. 09/517,691
ATTORNEY DOCKET NO. Q58016

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Kelly G. Hyndman
Registration No. 39,234

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE



23373

PATENT TRADEMARK OFFICE

Date: May 14, 2003